

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re MORGAN STANLEY MORTGAGE PASS-THROUGH CERTIFICATES LITIGATION	:	Civil Action No. 1:09-cv-02137-LTS
	:	<u>CLASS ACTION</u>
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This Document Relates To:	:	
ALL ACTIONS.	:	
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NOTICE OF RECENT AUTHORITY

Plaintiffs respectfully submit this Notice of Recent Authority to bring to the Court's attention recent testimony by a former officer of Morgan Stanley ("Morgan Stanley") before Congress's Financial Crisis Inquiry Commission ("FCIC") that is relevant to defendants' pending motion to dismiss the Second Amended Complaint for Violation of the Federal Securities Laws (the "Complaint") (Docket No. 84). The recently-discovered information described herein supports plaintiffs' argument that their claims are timely and not barred by the statute of limitations. This information first came to light during the testimony to the FCIC on October 14, 2010 and relates to the underlying mortgage loans securitized by defendant Morgan Stanley Capital I Inc. ("Morgan Stanley Capital") and the underwriting practices employed by the lenders who originated those loans.

Specifically, on October 14, 2010, the FCIC interviewed Tony Peterson ("Peterson"), who was responsible for managing the due diligence on Morgan Stanley's prime, sub-prime, and Alt-A bulk loan acquisitions. Ex. A at 9:8-12. Peterson was a member of the team who received reports from Clayton Holdings, LLC ("Clayton"), a third party that Morgan Stanley hired to review a sampling of the loans it was bundling into pools of securities in order to determine whether the underlying loans were originated in accordance with established underwriting criteria. *Id.* at 17:6-18:17, 33:5-15, 51:18-24. From Q1'06 through Q2'07, Clayton reviewed and provided analysis for 62,940 Morgan Stanley loans, of which 23,154, or 36%, Clayton determined were "rejects." *Id.* at 41:16-42:3. According to Peterson, these "reject" loans were loans that had "exceptions," meaning that they were missing loan documentation, did not meet loan underwriting guidelines, or otherwise had greater risk profiles than they should have had for the loan pool, and thus should not have been kept in the pool. *Id.* at 18:2-19:5; 42:15-44:5. From Q2'06 through Q4'06, Morgan Stanley overturned Clayton's findings and kept in the loan pools 64% of these "reject" loans. *Id.* at 51:25-

52:22. For example, Morgan Stanley approved or “waived in” 1,180 of 1,296 loans in which Clayton found the appraisal value used by the lender to not be supportable – a waiver rate of 91%. *Id.* at 90:25-91:15. Morgan Stanley similarly approved or waived in 1,109 of 1,442 loans in which Clayton found borrower cash reserves to be less than required and 1,085 of 1,945 loans in which Clayton found the loan characteristics to not match any available program, *i.e.*, loans not meeting any loan underwriting guidelines. *Id.* at 91:15-18, 94:2-25.

Thus, Morgan Stanley securitized and sold to the investing public the majority of the loans that Clayton identified as not meeting the stated loan underwriting guidelines. *See supra.* This new information further supports plaintiffs’ allegations that, contrary to defendants’ statements in the Registration Statement and Prospectus Supplements that the loans met certain stated loan underwriting guidelines, large percentages of Morgan Stanley’s loans actually did not meet the stated underwriting standards in violation of §§11, 12 and 15 of the Securities Act of 1933. *See Complaint,* ¶¶4-7, 36-48, 74-79. This recent testimony further supports plaintiffs’ allegations that defendants’ statements in the Offering Documents were untrue. In addition, the timing of the October 14, 2010 testimony, which has only recently become available to the investing public, supports plaintiffs’ argument that their claims are timely and the “negative watches” and general information relating to the overall housing market and underwriting guidelines of subprime originators did not put plaintiffs on notice of the untrue statements and omissions specifically

relating to the Morgan Stanley certificates at issue in this litigation. This Court should consequently uphold plaintiffs' claims as timely.

DATED: March 4, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 4, 2011.

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